IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.45 OF 1997

The Commissioner of Income Tax
Nasik .. Applicant.
V/s.
Mulla S.S.K. Ltd. Satai .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 19TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the applicant. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> Whether on the facts and in the circumstances of the case, the I.T.A.T. relying on the Special Bench in the case of Shri Chatrapati SSK Ltd. (198 ITR 78 AT) was right in deleting the following additions by holding that the various funds and deposits are not trading receipts of the assessee as held by the Supreme Court in the case of Bazpur Co-op. Sugar Factory Ltd. (172 ITR 321) ?
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> | | |
> |---|---|
> | 1. Non refundable deposit | Rs.20,72,578 |
> | 2. Education fund | Rs. 5,56,352 |
> | 3. Hutment fund | Rs. 1,39,797 |
> | 4. Refundable deposit | Rs.27,64,770 |
> | 5. C.M. Fund | Rs. 1,39,947 |
> | 6. Small Savings | Rs. 2,70,160 |
> | 7. Area Development fund | Rs.16,75,939 |
> | 8. Interest on NRD | Rs.23,57,347 |

2. In so far as all other items except area

development fund and interest on NRD are concerned, the issue is covered by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as Area Development Fund and interest on NRD are concerned, the issue will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra). As such the said issues stand remanded back to the Tribunal for consideration afresh.

3. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)